

**DRAFT TOT BALLOT - Local 145/POA Proposal with Maienschein
Modifications**

(O-2004-)

ORDINANCE NUMBER _____(NEW SERIES)

ADOPTED ON _____, 2004

AN ORDINANCE SUBMITTING TO THE QUALIFIED
VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL
ELECTION CONSOLIDATED WITH THE STATEWIDE
GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2004,
ONE PROPOSITION, RELATING TO INCREASING THE
CITY'S TRANSIENT OCCUPANCY TAX FROM 10.5% TO
13%

WHEREAS, pursuant to section 9222 of the California Elections Code, and
section 27.1001 of the San Diego Municipal Code, the City Council has authority to place
propositions on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. _____, adopted on _____, 2004, the
Council of the City of San Diego is calling a Municipal Election to be consolidated with the
California Statewide General Election on November 2, 2004, for the purpose of submitting to the
qualified voters of the City one or more ballot propositions; and

WHEREAS, the City of San Diego currently imposes a 10.5 percent transient occupancy
tax upon the guests of hotels and other transient accommodations located throughout the City;
and

WHEREAS, the City Council desires to raise the transient occupancy tax and require that
a portion of the transient occupancy tax revenues be used for Fire-Rescue Department facilities
and equipment, Police Department facilities and equipment, and San Diego tourism promotion,

and

WHEREAS, the City Council desires to submit to the voters at that Municipal Election one ballot proposition, entitled “Police/Fire Emergency Services and Tourism Promotion Ordinance”; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. One ballot proposition amending the San Diego Municipal Code is hereby submitted to the qualified voters of the City at the Municipal Election to be held November 2, 2004, the proposition to read as follows:

PROPOSITION

That Chapter 3, Article 5, Division 1, of the San Diego Municipal Code is amended by repealing sections 35.0103, 35.0104, 35.0105, 35.0106, 35.0107, and 35.0108, which collectively imposed a 10.5 percent transient occupancy tax for the privilege of occupancy in hotels, recreational vehicle parks, and campgrounds.

That Chapter 3, Article 5, Division 1, of the San Diego Municipal Code is amended by adding new section 35.0103, to read as follows:

§ 35.0103 Tax Imposed

For the privilege of Occupancy in any Hotel, any Recreational Vehicle Park, or any Campground, each Transient is subject to and shall pay a tax in the amount of 13 percent (13%) of the Rent charged by the Operator.

That Chapter 3, Article 5, Division 1, of the San Diego Municipal Code is amended by repealing sections 35.0128, 35.0129, 35.0130, 35.0131, 35.0132, and 35.0133, which

collectively have established the process for utilizing revenues collected from transient occupancy taxes.

That Chapter 3, Article 5, Division 1, of the San Diego Municipal Code is amended by adding new sections 35.0128, 35.0129, 35.0130, 35.0131, 35.0140, 35.0141, 35.0142, and 35.0143, which sections may not be repealed or amended except at an election and by a two-thirds vote of the qualified voters of the City of San Diego, to read as follows:

§ 35.0128 Utilization of Revenues from Tax Imposed by Section 35.0103

- (a) There are hereby created the following funds: TOT Fire-Rescue Fund, TOT Police Fund, and Tourism Marketing and Promotion Fund.
- (b) All revenues collected pursuant to the transient occupancy tax imposed by the City under section 35.0103 shall be utilized and expended solely in accordance with this section, as follows:
 - (1) One and one-quarter of a cent (\$0.0125) of every 13 cents projected for collection shall be included in the City Manager's budget for deposit in the TOT Fire-Rescue Fund to be appropriated by the City Council for the repair, replacement, and improvement of fire-rescue facilities, equipment, and infrastructure described in section 35.0129. Revenues from this fund shall not be used for personnel stationed at existing facilities, but may be used to provide personnel related to new stations as described in section 35.0129. The TOT Fire-Rescue Fund budget shall be adjusted to actual revenues in the succeeding fiscal year.
 - (2) One and one quarter of a cent (\$0.0125) of every 13 cents projected for collection shall be included in the City Manager's budget for deposit in

the TOT Police Fund to be appropriated by the City Council for the Police facilities and equipment described in section 35.0130. The TOT Police Fund budget shall be adjusted to actual revenues in the succeeding fiscal year.

- (3) Two and one-half cents (\$0.025) of every 13 cents projected for collection shall be included in the City Manager's budget for deposit in the Tourism Marketing and Promotion Fund to be used in the manner described in section 35.0131. The Tourism Marketing and Promotion Fund budget shall be adjusted to actual revenues in the succeeding fiscal year.
- (4) All transient occupancy tax revenues not allocated pursuant to subsections (b)(1) through (b)(3) shall be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's Annual Appropriation Ordinance.

§ 35.0129 TOT Fire-Rescue Fund

Expenditures from the TOT Fire-Rescue Fund shall be in addition to and shall supplement current expenditure levels being used for fire protection equipment, apparatus, deferred maintenance and facilities. Current expenditure levels are defined as Fiscal Year 2003 actual expenses increased annually by an amount equivalent to the annual percentage growth of the General Fund. However, in any given fiscal year, the City Council may make a finding to waive the requirement to maintain current expenditure level funding, but only if revenue from the TOT Fire-

Rescue Fund and any other funding dedicated for the purposes described in this section are found to be sufficient to meet the goals and objectives outlined in this section. Appropriations are eligible to be made from the TOT Fire-Rescue Fund in the following manner:

- (a) All revenue accumulated in the fund during Fiscal Year 2004-2005 shall be used to fund Fire-Rescue and Lifeguard deferred maintenance, with the exception that up to \$750,000 may be used to pay initial consulting fees required for the Public Safety Communications Plan; and
- (b) All revenue accumulated in the fund during Fiscal Year 2005-2006 shall be used to fund the Public Safety Communications Plan at the same level of funding that was used for deferred maintenance during Fiscal Year 2004-2005 with the remaining balance used to fund additional deferred maintenance and other Fire-Rescue needs; and
- (c) All revenue accumulated in the fund beginning in Fiscal Year 2006-2007 shall be utilized to fund the Public Safety Communications Plan, on a cash basis, until the project is completely implemented; and
- (d) After the provisions in subsections (a) through (c) have been satisfied, funds in the TOT Fire-Rescue Fund shall be used:
 - (1) to lease or lease-purchase and maintain fire apparatus and replace existing outdated and aging fleet; and
 - (2) to purchase equipment identified in the Fire-Rescue needs assessment report presented to the City's Public Safety and Neighborhood Services Committee on Wednesday, March 17, 2004; and

- (3) to eliminate the backlog of deferred maintenance for Fire-Rescue equipment, apparatus, and facilities identified through Fiscal Year 2004; and
- (4) to create a maintenance plan to ensure that current Fire-Rescue equipment, apparatus, and facilities do not become maintenance deferred once the backlog identified through Fiscal Year 2004 has been eliminated; and
- (5) after funding is completed for the priorities identified in subsections (d)(1) through (d)(4), revenues in the TOT Fire-Rescue Fund shall be used:
 - (A) to develop and implement a long-term plan to address the goal of six-minute emergency response time, including using such revenues for purchasing land, construction, equipment, and apparatus, and personnel for new fire stations; and
 - (B) To maintain a reserve in the TOT Fire-Rescue Fund of no less than ten percent (10%) of the funds projected for the fiscal year to be deposited into the TOT Fire-Rescue Fund.

§ 35.0130 TOT Police Fund

Expenditures from the TOT Police Fund shall be in addition to and shall supplement current expenditure levels being used for public safety equipment, police vehicles, deferred maintenance, and facilities. Current expenditure levels are defined as Fiscal Year 2003 actual expenses increased annually by an amount equivalent to the annual percentage growth of the General Fund. However, in any

given fiscal year the City Council may make a finding to waive the requirement to maintain current expenditure level funding, but only if revenue from the TOT Police Fund and any other funding dedicated for the purposes described in this section are found to be sufficient to meet the goals and objectives outlined in this section.

Appropriations are eligible to be made from the TOT Police Fund in the following manner:

- (a) All revenue accumulated in the fund during Fiscal Year 2004-2005 shall be used to fund Police Department deferred maintenance, with the exception that up to \$750,000 may be used to pay initial consulting fees required for the Public Safety Communications Plan; and
- (b) All revenue accumulated in the fund during Fiscal Year 2005-2006, shall be used to fund the Public Safety Communications Plan at the same level of funding that was used for deferred maintenance during Fiscal Year 2004-2005 with the remaining balance to be used to fund additional deferred maintenance and other Police Department needs; and
- (c) All revenue accumulated in the fund beginning in Fiscal Year 2006-2007 shall be utilized to fund the Public Safety Communications Plan, on a cash basis, until the project is completely implemented; and
- (d) After the provisions in subsections (a) through (c) have been satisfied, revenues in the TOT Police Fund shall be used:
 - (1) to purchase and maintain police vehicles to replace the existing fleet;
 - and

- (2) to purchase equipment and supplies identified in the Police Department needs assessment report presented to the City's Public Safety and Neighborhood Services Committee on Wednesday, March 17, 2004; and
- (3) to eliminate the backlog of deferred maintenance on equipment and facilities identified through Fiscal Year 2004; and
- (4) to create a maintenance plan to ensure that Police Department equipment, vehicles, and facilities do not become maintenance deferred once the backlog identified through Fiscal Year 2004 has been eliminated; and
- (5) after funding is completed for the priorities identified in subsections (d)(1) through (d)(4), revenues in the TOT Police Fund shall be used:
 - (A) to develop and implement a long-term plan to address the goal of maintaining two officers per 1,000 residents within the City of San Diego; and
 - (B) to maintain a reserve in the TOT Police Fund of no less than ten percent (10%) of the TOT funds projected for the fiscal year to be deposited into the TOT Police Fund.

§ 35.0131 Tourism Marketing and Promotion Fund

- (a) Revenue projected for deposit into the Tourism Marketing and Promotion Fund shall be budgeted for uses in furtherance of the purpose of generating the collection of additional Transient Occupancy Taxes by generally promoting and marketing tourism in the City of San Diego, and specifically attracting overnight visitors to hotels within the city of San Diego, and for no

other purpose or intent.

- (b) Appropriations are eligible to be made from the Tourism Marketing and Promotion Fund to groups, organizations, and events that clearly demonstrate both:
 - (1) the delivery of overnight visitors who occupy hotel rooms in the City of San Diego; and,
 - (2) a fiscal return on investment (ROI) relating to returning monies to the City general fund and generating economic activity that benefits the San Diego business community.
- (c) The Tourism Marketing and Promotion Board (35.0140) shall annually establish and submit to the City Council for approval the guidelines for application to the Tourism Marketing and Promotion Board. These guidelines will contain criteria for the measurement of the desired return on investment from recipient groups and will be represented as a percentage return on the dollar. These criteria will be based on a formula derived by the Board from generally available City financial information, TOT performance data, and accepted hotel industry practices for tracking and calculating consumed room nights and other pertinent measurements.
- (d) The Board shall establish and maintain a Tourism Contingency Reserve, of no less than 10 percent and no more than 30 of annual revenues projected for collection, into which all unallocated annual revenue shall be deposited and held in trust to be only utilized for emergency or special purposes to maintain the level tourism business in the City of San Diego. The criteria for utilization of the funds

for the tourism Contingency Reserve shall be within the sole discretion of, be established, or changed only by a majority vote of the Board. Upon disbursement of funds from the Tourism Contingency Reserve shall require a majority vote of the City Council.

§ 35.0140 City of San Diego Tourism Promotion Review Board

There is hereby created the City of San Diego Tourism Promotion Review Board. The Board shall have review and advisory responsibility over the budgeting of all funds deposited into the Tourism Marketing and Promotion Fund, as provided in section 35.0131.

§ 35.0141 Membership of San Diego Tourism Promotion Review Board

The membership of the City of San Diego Tourism Promotion Review Board shall be appointed by the Mayor and confirmed by the City Council, and shall consist of seven (7) members as follows:

- (a) One (1) person from a nominating slate of no less than three persons submitted by the San Diego County Hotel and Motel Association who are owners of one or more lodging establishments in the City of San Diego, for a total of two; and
- (b) One (1) person from a nominating slate of no less than three persons submitted by the San Diego Lodging Industry Association who are owners of one or more lodging establishments in the City of San Diego, for a total of two; and
- (c) One person (1) from a nominating slate of no less than three persons submitted by the San Diego County Hotel and Motel Association who hold

- the title of General Manager, or its functional equivalent, at one or more lodging establishments in the City of San Diego, for a total of two; and
- (d) One person (1) from a nominating slate of no less than three persons submitted by the San Diego Lodging Industry Association who hold the title of General Manager, or its functional equivalent, at one or more lodging establishments in the City of San Diego, for a total of two; and
 - (e) Two at-large representatives selected from among individuals with demonstrated qualifications and experienced in the professional promotion and/or development of tourism in the San Diego region to be nominated by the Mayor and confirmed by the City Council; and
 - (f) One (1) person appointed from a nominating slate of no less than three persons submitted by the San Diego-Imperial Counties Labor Council.

§ 35.0142 Terms of Members of the City of San Diego Tourism Promotion Review Board

- (a) The members of the City of San Diego Tourism Promotion Review Board shall serve without compensation for terms of four (4) years and until their successors are appointed and qualified. In order to provide for staggered terms, initial appointments to this Board shall be made so as to provide that the terms of office of two members shall be for four years; two members for three (3) years; two members for two (2) years; and one member for one (1) year. The staggering of terms will be established at the first meeting by a draw of lots.
- (b) Members of this Board may be re-nominated and reappointed, subject to the term limitations set forth in San Diego City Charter section 43(a). Members of

the Board may be removed, for cause, by a two-thirds (2/3) vote of the City Council. If the status of a person appointed to this Board changes, so that he or she no longer serves in a representative capacity that would qualify for eligibility for appointment under section 35.0141 for membership on this Board, then his or her position shall be deemed vacant, and the Mayor shall appoint a qualified successor, selecting from the appropriate slate that provided the original nomination as provided in section 35.0141 to fill out the remainder of the unexpired term as provided in this section.

- (c) The Board shall have the power and authority upon a majority vote to annually elect a Chairperson.
- (d) A conflict of interest code shall be adopted for this Board. All members shall be required to complete and file a Statement of Economic Interests in accordance with the conflict of interest code. Failure to file a Statement of Economic Interests will be considered cause for removal.

§ 35.0143 Responsibilities and Duties of the San Diego Tourism Promotion Review Board

The City of San Diego Tourism Promotion Review Board shall have the following responsibilities and duties:

- (a) The Board shall prepare on a annual basis, by no later than April 1 of each year, a proposed funding budget, based on revenue projections provided by the City Manager, for the upcoming fiscal year for the allocation, application, and disbursement of 100 percent (100%) of the funds held in or to be paid to the Tourism Marketing and Promotion Fund. This budget shall be submitted to the Council for approval consistent with Article VII of the City Charter

with the Council having the final authority to approve the budget.

- (b) City staff supporting the San Diego Promotion Review Board, in conjunction with the City Manager and the City Auditor and Comptroller, shall be responsible for letting, administering and auditing all contracts awarded pursuant to the budget described in this section in accordance with City Council Policy 100-3. The City shall have the authority to audit any and all aspects of the contracts awarded, as well as any and all aspects of any other expenditures allocated by the Board.
- (c) The Board is authorized and empowered to take acts and actions necessary, in its discretion, in furtherance of the generation of Transient Occupancy Taxes in the City by the promotion of tourism in the City, including the power and authority, from time to time, to:
 - (1) Evaluate the status and effectiveness of tourism promotion for the City;
and
 - (2) Establish priorities in the allocation of funds from the Tourism Marketing and Promotion Fund; and
 - (3) Review and audit the programs of those entities that receive funding from the Tourism Marketing and Promotion Fund as a supplement to the audits referenced above in subsection (b) conducted by the City Auditor and Comptroller. This Board may establish criteria for the review and contract for a regularly scheduled performance audit of all recipients of revenue from the Tourism Marketing and Promotion Fund, relative to that portion of the recipients' budget represented by Tourism Marketing

and Promotion Fund expenditures. The audit of a recipient shall occur no more frequently than biennially and at least once every four years.

This

audit shall be performed by a nationally recognized company qualified in this subject; and

- (4) Adopt rules and regulations, consistent with applicable law, that relate to and otherwise guide the Board's operations and procedures.
- (d) The City of San Diego Tourism Promotion Review Board shall not duplicate, replicate or in any way replace or compete with the mission, programs or marketing responsibilities or activities of recipients of Tourism Marketing and Promotion Fund revenue.
- (e) The City of San Diego Tourism Promotion Review Board shall not, as a Board, engage in political activity.
- (f) All costs incurred in administering the activities of the City of San Diego Tourism Promotion Review Board, including, but not limited to, the cost of a contracted auditor(s), shall be paid annually from the Tourism Marketing and Promotion Fund, and shall represent no more than 5 percent of the total annual Tourism Marketing and Promotion Fund.
- (g) City overhead expenses allocated to and used for administering the City of San Diego Tourism Promotion Review Board and the Tourism Marketing and Promotion Fund will be included in the budget of the City of San Diego.
- (h) All meetings of the City of San Diego Tourism Promotion Review Board shall be open to the public and all persons shall be permitted to attend except

as to those matters exempted by the Ralph M. Brown Act (California Government Code sections 54950, et seq.).

That the amendments to Chapter 3, Article 5, Division 1, of the San Diego Municipal Code described in this proposition shall not take effect until January 1, 2005, and that in the event any of the amendments to Chapter 3, Article 5, Division 1, of the San Diego Municipal Code described in this proposition are found to be unconstitutional or otherwise repealed by act of law, that all amendments to Chapter 3, Article 5, Division 1, of the San Diego Municipal Code made effective by the passage of this proposition shall be null and void. In such event, all sections of Chapter 3, Article 5, Division 1, of the San Diego Municipal Code deemed repealed by this proposition shall return to full force and effect, and the City shall have the authority to collect a transient occupancy tax in the amount of 10.5% and allocate such revenues in the manner authorized prior to the passage of this proposition.

If, at the time this ballot measure is presented to the people for their approval, there is on the same ballot any additional ballot measures relating to an increase in transient occupancy taxes, and more than one ballot measure relating to an increase in transient occupancy taxes is approved by the voters, the ballot measure receiving the most votes shall be declared the prevailing measure, and shall be given full force and effect.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION _____. FIRE/POLICE EMERGENCY SERVICES AND TOURISM PROMOTION Shall the City increase the transient occupancy tax (TOT) paid by hotel and motel visitors from 10.5% to 13%, and shall these funds, along with some current TOT funds, be earmarked to fund Fire-Rescue and Police emergency services, equipment and facilities and to establish a Tourism	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the two-thirds vote of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to Section 9295 of the California Elections Code, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice in his office the specific dates that the examination period will run.

Section 8. Pursuant to Section 17 of the Charter of the City of San Diego, this ordinance relating to elections shall take effect on _____, 2004, which is the day of its introduction and passage.

APPROVED: CASEY GWINN, City Attorney

By _____
Richard A. Duvernay
Deputy City Attorney

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